



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R08-OAR-2018-0530; FRL-9987-96-Region 8]**

#### **Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Motor Vehicle Inspection and Maintenance Program and Associated Revisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving two State Implementation Plan (SIP) revisions submitted by the State of Colorado. The revisions involve amendments to Colorado's Regulation Number 11, "Motor Vehicle Emissions Inspection Program." The revisions enhance the use of Regulation Number 11's Clean Screen Program, allow self-inspecting vehicle fleets to use the On-Board Diagnostics (OBD) testing procedure, provide corrections to the Low Emitter Index (LEI) component of the Clean Screen Program, clarify existing provisions, correct administrative errors, delete obsolete language, establish inspection procedures for when emission control equipment tampering is detected, and make several other minor associated revisions. These actions are being taken under section 110 of the Clean Air Act (CAA).

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2018-0530. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available (e.g., Confidential Business Information) or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through [www.regulations.gov](http://www.regulations.gov), or please contact the person identified in the “For Further Information Contact” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Tim Russ, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6479, [russ.tim@epa.gov](mailto:russ.tim@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

In a rulemaking published on August 17, 2018 (83 FR 41035), the EPA proposed approval of various revisions to Colorado’s Regulation Number 11 that the State submitted to the EPA on February 20, 2015, and on May 14, 2018. Most of the revisions involve minor updates to several sections of Regulation Number 11 and the deletion of obsolete language. The August 17, 2018 notice gives a detailed description of each revision.

In this rulemaking the EPA is taking final action to approve the proposed revisions, which are listed in section III below. The reasons for our approval are provided in the proposed rule.

### **II. Response to Public Comments**

The EPA received one anonymous comment on the proposed SIP amendments to Colorado’s Regulation Number 11. After reviewing the comment, the EPA has determined that the comment is outside the scope of our proposed action. We note the EPA is not removing or relaxing any emissions standards in this action. The comment that we received on this action is available for review in the docket for this rulemaking. This rule will be finalized as proposed

without revisions.

### **III. Final Action**

For the reasons expressed in the proposed rule, the EPA is approving the two SIP submittals to Regulation Number 11 as submitted by the State of Colorado on February 20, 2015, and on May 14, 2018. These revisions were discussed in our August 17, 2018 proposed rule and are as follows:

- a. Addition of a definition of "Tampering" to Part A.II.
- b. Revisions to Part B.IV.B to require span gases to be labelled in accordance with Attachment VI of Appendix A.
- c. Revisions to Part A.II.16 and Part C.XII. (A.3 and C.2) to increase clean screening efficiency by removing the requirement that two qualifying clean screen observations must be made on different days or at different locations.
- d. Revisions to Part C.II.B.4 to remove incomplete and obsolescent qualifying criteria for certain vehicles that are unable to be tested on the IM240 chassis dynamometer.
- e. Revisions to Part C.II.C to allow self-inspecting gasoline vehicle fleets to utilize the more effective and more convenient OBDII testing procedure on all 1996 model year and newer vehicles.
- f. Revisions to Part C.II.C.3 regarding acceptable readiness criteria for OBD sensors and monitors.
- g. Revisions to Part C.II.C.9 and C.10 regarding I/M240 tests and tampering associated with OBD tests.
- h. Revisions to Part C.VIII and IX to clarify and modernize provisions for issuance of emissions repair, diagnostic and economic hardship waivers.

- i. Revisions to Part D.I.B. 5, 6, and 7 to remove obsolete language regarding dwell meters, timing lights, and idle adjustment.
- j. Revisions to Part F.VI.B, the roadside remote sensing clean screen LEI, to allow for greater utilization of this component of the I/M program.
- k. Revisions to Part F.VII regarding OBD testing criteria.
- l. Revisions to Appendix A, Technical Specifications; Introduction, Section 2.11; Attachment IV, Section 2.0; Attachment V; Attachment VI, and the deletion of Appendix B in its entirety to remove obsolete specifications and procedures for vehicle inspection analyzer calibration gasses.
- m. Corrections of typographical, grammatical, and formatting errors throughout Regulation Number 11.

#### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Colorado's Regulation Number 11 described in the amendments set forth to 40 CFR part 52, below. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 8 office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the

EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

## **V. Statutory and Executive Orders Review**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this final action merely approves some state law as meeting federal requirements; this final action does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, Feb. 2, 2017) regulatory action because actions such as approving SIPs are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

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<sup>1</sup> 62 FR. 27968 (May 22, 1997).

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, Feb. 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States

prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: December 20, 2018.

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Douglas Benevento,  
Regional Administrator,  
Region 8.

40 CFR part 52 is amended to read as follows:

## **PART 52 APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

### **Subpart G - Colorado**

2. In § 52.320, the table in paragraph (c) is amended by:

- a. Revising the entry for “II. Definitions.” under the centered heading “5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part A, General Provisions, Area of Applicability, Schedules for Obtaining Certification of Emissions Control, Definitions, Exemptions, and Clean Screening/Remote Sensing”;
- b. Revising the entry for “IV. Span Gases For Use With Colo ‘94 Test Analyzer Systems.” under the centered heading “5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part B, Standards and Procedures for the Approval, Operation, Gas Span Adjustment, Calibration and Certification of the Division Approved Test Analyzer Systems for Use in the Basic and Enhanced Areas and Test Analyzer Systems for Licensed Dealers in the Enhanced Area”;
- c. Revising the entries for “II. Exhaust Emissions Inspection Procedures” and “VIII. Certification of Emissions Control”, by removing and reserving the entry for “IX. Adjustment Procedures” and by revising the entries for “X. Emissions Related Repairs” and “XII. Clean Screen Inspection Program Procedures” under the centered heading “5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part C, Inspection Procedures and Requirements for Exhaust Emissions, Fuel Evaporation Control, Visible Smoke Emissions, Emissions Control Systems, On-Board Diagnostics (OBD); and Practices to Ensure Proper



Emissions Related Adjustments and Repairs”;

d. Revising the entry for “I. Licensing of Emissions Inspection and Readjustment Stations, Inspection-Only Stations, Inspection-Only Facilities, Enhanced Inspection Centers, Fleet Inspection Stations and Motor Vehicle Dealer Test Facilities” under the centered heading “5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part D, Qualification and Licensing of Emissions Mechanics, Emissions Inspectors and Clean Screen Inspectors; Licensing of Emissions Inspection and Readjustment Stations, Inspection-Only Stations, Inspection-Only Facilities, Fleets, Motor Vehicle Dealer Test Facilities and Enhanced Inspection Centers; Qualification of Clean Screen Inspection Sites; and Registration of Emissions Related Repair Facilities and Technicians”;

e. Revising the entries for “VI. Clean Screen Program Maximum Allowable Emissions Limits” and “VII. On-Board Diagnostic Inspection Passing Criteria” under the centered heading “5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part F, Maximum Allowable Emissions Limits for Motor Vehicle Exhaust, Evaporative and Visible Emissions for Light-Duty and Heavy-Duty Vehicles”;

f. Revising the entry for “Appendix A, Technical Specifications” under the centered heading “5 CCR 1001-13, Regulation Number 11, Appendices”; and

g. Removing the entry for “Appendix B, Standards and Specifications for the Suppliers of Span and Calibration Gases” under the centered heading “5 CCR 1001-13, Regulation Number 11, Appendices.”

The revisions read as follows:

**§ 52.320 Identification of plan.**

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(c) \* \* \*

Title	State effective date	EPA effective date	Final Rule citation/date	Comments
* * *	*	*	*	*
<b>5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part A, General Provisions, Area of Applicability, Schedules for Obtaining Certification of Emissions Control, Definitions, Exemptions, and Clean Screening/Remote Sensing</b>				
* * *	*	*	*	*
II. Definitions	11/30/2014	[Insert date 30 days after date of publication in the <b>Federal Register</b> ].	[Insert <b>Federal Register</b> citation]. [Insert date of publication in the <b>Federal Register</b> ].	
* * *	*	*	*	*
<b>5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part B, Standards and Procedures for the Approval, Operation, Gas Span Adjustment, Calibration and Certification of the Division Approved Test Analyzer Systems for Use in the Basic and Enhanced Areas and Test Analyzer Systems for Licensed Dealers in the Enhanced Area</b>				
* * *	*	*	*	*
IV. Span Gases For Use With Colorado 94 and Colorado 97 Test Analyzer Systems	11/30/2014	[Insert date 30 days after date of publication in the <b>Federal Register</b> ].	[Insert <b>Federal Register</b> citation]. [Insert date of publication in the <b>Federal Register</b> ].	
* * *	*	*	*	*
<b>5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part C, Inspection Procedures and Requirements for Exhaust Emissions, Fuel Evaporation Control, Visible Smoke Emissions, Emissions Control Systems, On-Board Diagnostics (OBD); and Practices to Ensure Proper Emissions Related Adjustments and Repairs</b>				
* * *	*	*	*	*
II. Exhaust Emissions Inspection Procedures	11/30/2014 9/30/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ].	[Insert <b>Federal Register</b> citation]. [Insert date of publication in the <b>Federal Register</b> ].	.
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VIII. Certification of Emissions Control	11/30/2014	[Insert date 30 days after date of publication in the <b>Federal Register</b> ].	[Insert <b>Federal Register</b> citation]. [Insert date of publication in the <b>Federal Register</b> ].	
* * *	*	*	* *	
X. Emissions Related Repairs	11/30/2014	[Insert date 30 days after date of publication in the <b>Federal Register</b> ].	[Insert <b>Federal Register</b> citation]. [Insert date of publication in the <b>Federal Register</b> ].	
* * *	*	*	* *	
XII. Clean Screen Inspection Program Procedures	11/30/2014	[Insert date 30 days after date of publication in the <b>Federal Register</b> ].	[Insert <b>Federal Register</b> citation]. [Insert date of publication in the <b>Federal Register</b> ].	
<b>5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part D, Qualification and Licensing of Emissions Mechanics, Emissions Inspectors and Clean Screen Inspectors; Licensing of Emissions Inspection and Readjustment Stations, Inspection-Only Stations, Inspection-Only Facilities, Fleets, Motor Vehicle Dealer Test Facilities and Enhanced Inspection Centers; Qualification of Clean Screen Inspection Sites; and Registration of Emissions Related Repair Facilities and Technicians</b>				
I. Licensing of Emissions Inspection and Readjustment Stations, Inspection-Only Stations, Inspection-Only Facilities, Enhanced Inspection Centers, Fleet Inspection Stations and Motor Vehicle Dealer Test Facilities	9/30/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ].	[Insert <b>Federal Register</b> citation]. [Insert date of publication in the <b>Federal Register</b> ].	
* * *	*	*	* *	
<b>5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part F, Maximum Allowable Emissions Limits for Motor Vehicle Exhaust, Evaporative and Visible Emissions for Light-Duty and Heavy-Duty Vehicles</b>				
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VI. Clean Screen Program Maximum Allowable Emissions Limits	9/30/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ].	[Insert <b>Federal Register</b> citation]. [Insert date of publication in the <b>Federal Register</b> ].	
VII. On-Board Diagnostic Inspection Passing Criteria	9/30/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ].	[Insert <b>Federal Register</b> citation]. [Insert date of publication in the <b>Federal Register</b> ].	
* * * * *				
<b>5 CCR 1001-13, Regulation Number 11, Appendices</b>				
Appendix A, Technical Specifications	11/30/2014 9/30/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ].	[Insert <b>Federal Register</b> citation]. [Insert date of publication in the <b>Federal Register</b> ].	
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